

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Developing a Unified Inter-carrier
Regime

CC Docket No. 01-92

REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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The People of the State of California and the California Public Utilities Commission (“California or CPUC”) respectfully submit these comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) issued by the Federal Communications Commission (“FCC”) in the above-captioned proceeding.¹

I. SUMMARY

California agrees with both the goals and the framework that the FCC has set up in this FNPRM. Unfortunately, the reality of accomplishing ICC reform is unclear given the state of the proposals that have been submitted. We applaud all parties that have made submissions to this docket – this work is extremely complex, weighted by many years of policy and rule changes, is

¹ FNPRM “*In the Matter of Developing a Unified Intercarrier Compensation Regime*” CC Docket No 01-92, adopted February 10, 2005.

complicated by the current climate of industry consolidation and presents a moving target as telecommunications networks evolve. While the proposals are creative and contain elements that may solve the stated problems with the current ICC regimes, California cannot endorse any proposal without further empirical analysis and accompanying data that can be applied to all of the proposals.

California strongly urges the FCC to call for the appropriate effort necessary to objectively analyze all of the proposals. States' rights and responsibilities, and parties interests will be best served by supporting the continuing efforts of the National Association of Regulatory Commissioners ("NARUC") Task Force. California endorses this approach. Specifically, California urges the FCC to require all parties submitting proposals to provide relevant data and details and to work together with the established NARUC Metrics workgroup to complete the model analysis of the NARUC plan and use that model to collect further data to and analyze the other proposals. It appears that this approach allows the best chance to reach the goals that the FCC has set in the FNPRM for an appropriate ICC regime. California agrees with a fair and balanced approach that promotes: 1)

economic efficiency, 2) preservation of universal service, 3) competitive and technological neutrality, and 4) administrative efficiency.²

II. BACKGROUND

In February 2005, the FCC adopted an FNPRM seeking comment on the multiple industry proposals for comprehensive reform of existing ICC regime. The FCC also requested comment on whether and how these reform proposals would affect network interconnection and on implementation issues associated with any reform effort. The FCC asked parties to keep in mind several goals when reviewing the proposals: 1) promotion of economic efficiency, 2) preservation of universal service, 3) competitive and technological neutrality and 4) administrative efficiency. California believes that these goals can be achieved and are not exclusive of our stated goals for telecommunications regulation. Our goals are to develop and implement policies and procedures to facilitate competition in all California markets, and address any regulatory changes required by state law. Further, California promotes the following: the provision of telecommunications networks where there is a large number of competing providers using a variety of technologies; fair, affordable, universal access to necessary services, with special emphasis on preserving universal access; the development of clear rules of the game and regulatory tools to allow flexibility

² FNPRM, ¶¶ 29-36.

without compromising due process; the removal of barriers that prevent a fully competitive market; and reducing or eliminating burdensome regulation.³

California asserts that the stated goals for ICC in the FNPRM remain true to the principles of the 1996 Act and are consistent with the telecommunications goals of California. But the FCC needs a balanced approach to meet these goals, as the goals can potentially conflict or compete with each other. For example, public utility policy makers often face the dilemma of economic efficiency versus universal service. While economic efficiency requires accurate price signals, reflecting the true costs of services may result in higher, even unaffordable rates. Thus, a review of the proposals, while taking into account the FCC's ICC goals, must also take into account competing objectives. Furthermore, consistent with the FNPRM, any proposal must include an implementation plan detailing the transition from the current plan through any proposed changes.

III. THE LACK OF DATA ON IMPACTS MAKES IT DIFFICULT TO ASCERTAIN IF THE PROPOSALS MEET THE FCC'S GOALS

As noted in the FNPRM, the current ICC regime has numerous problems resulting from a patchwork of rules pieced together one-by-one over the past two-plus decades. Resolving those problems will not be a quick and

³ CPUC Website: <http://www.cpuc.ca.gov/static/industry/telco/telecom+division/index.htm>

easy process. California agrees with SureWest that there is no need for the Commission to move quickly through a process without reflecting appropriately on the public interests⁴. Furthermore, California also agrees with SureWest that no proposal has been supported by backup data at a level of detail sufficient to allow evaluation of the impact of the plan⁵ on the industry, end users, and in California's case, the State as a whole. Looking at NECA's comments, the analysis provided "is based only on sample data, relies on significant estimates and assumptions and is only for NECA pool members.⁶ Further, "sample data underlying" the analysis "are not sufficient to estimate detailed impacts at the state or study area level".⁷ SureWest notes that prior FCC proceedings have had an abundance of data, and in proceedings where the FCC found the data lacking, no decision was made until further data was collected. ⁸ California believes that the lack of data and details on impacts to all relevant parties, make it impossible for the FCC to ascertain whether the submitted proposals meet the FCC's goals for ICC reform. A complete analysis should provide the estimated impacts on carriers' losses, end-user's monthly statements, and universal service

⁴ SureWest comments, page 21.

⁵ SureWest comments, page 19.

⁶ NECA Comments, page 6.

⁷ NECA Comments, page 8.

⁸ SureWest comments, page 20.

funding. California is particularly concerned that any one state may be unfairly burdened with contributions to the universal service fund.

California cannot endorse a proposal when we have no data on which to base an endorsement.

Thus, California urges the FCC to require all parties submitting proposals to provide relevant data and details and to work together with the established NARUC Metrics workshop to complete the model analysis of the NARUC plan and use that model to collect further data to analyze the other proposals. This will enable the FCC to determine the impact of each plan on end-users, carriers, states and the industry as a whole.

IV MEETING THE GOALS OF ICC REFORM

California has reviewed the submitted proposals against the four goals set by the FCC. California finds that while the proposals attempt to meet these goals, no single proposal in its current form resolves the multitude of problems found in the current regime. Further, a lack of detailed data for any of the proposals makes it impossible to judge the true and complete impact of the proposals. A complete analysis should provide the estimated impacts on carriers' losses, end-user's monthly statements, and universal service funding. California is particularly concerned that any one state may be unfairly burdened with contributions to the universal service fund.

California cannot endorse a proposal when we have no data on which to base an endorsement.

Currently California, along with several other state commissions, is working with the NARUC staff to develop metrics for the NARUC proposal. California suggests that the FCC work along with NARUC to develop metrics for all of the proposals. This will enable the FCC to determine the impact of each plan on end users, carriers, states and the industry as a whole.

A. Promotion of Economic Efficiency

As clearly articulated in the FNPRM, efficient use of and investment in the telecommunications network, as well as the development of effective competition, are paramount goals. This means correct price signals must be given to all customers—end-users as well as carrier customers—using the network. California endorses the replacement of the current ICC regime with one that is economically efficient. That is an ICC regime that promotes rates resulting in efficient consumption of telecommunication services and efficient utilization of and investment in the network.

1. Economically efficient ICC plans should be based upon a forward-looking cost approach that meet the goals of both the FNPRM and the Telecommunications Act of 1996.

Since the passage of the Telecommunications Act of 1996, California has used the precept of economic efficiency in its own proceedings through

the use of a forward-looking cost approach for setting prices. Historically, California has approved prices for unbundled network elements and directory assistance listings using a forward-looking cost approach⁹.

Moreover, CBICC, Time Warner and CTIA all advocate the use of TELRIC as the basis for their ICC proposals. As stated in the CTIA comments, the establishment of TELRIC rates under the CBICC proposal are steps in the right direction¹⁰. Time Warner notes that while forward looking rates are not perfect, it is sound policy to rely on TELRIC as the basis for setting ICC rates since TELRIC rates do not significantly under-compensate carriers for the cost of providing switching service.¹¹ Time Warner points out that the Supreme Court in *Verizon Communs, Inc. v. FCC*, 535 U.S. 467, 516 (2002), held that TELRIC rates were “just and reasonable.”

Several commentators, including NECA and the Rural Alliance, argue that ICC rates should be cost-based and that the use of embedded costs versus forward looking costs is more economically efficient. NECA states that cost-based tariffs may be the most effective and economical proposal for the implementation of ICC¹². The Rural Alliance adds that cost-based rates should be set on incremental embedded costs plus a reasonable allocation of

⁹ See CPUC Opinion D.95-12-016, Appendix C.

¹⁰ CTIA comments, page 47.

¹¹ Time Warner Comments, page 8.

¹² NECA comments, page 19.

joint and common costs¹³. The Rural Alliance also notes that the TELRIC approach, as proposed by CBICC, is inconsistent with the FCC's approach to defining the additional cost standard simply because the TELRIC approach does not include a reasonable allocation of joint and common costs¹⁴.

California contends that the use of a reasonable allocation of joint and common costs corresponds with the goals of the 1996 Act. In costing proceedings, California has historically used the "reasonable allocation of joint and common costs" in association with forward-looking costs. The California approach to pricing is a two-stepped process: 1) forward-looking rates are determined, and 2) California adds on a percentage factor to cover joint and common costs. California believes that a "forward-looking cost-plus" rate that includes an allocation of common costs based on forward-looking economic cost complies with the 1996 Act and the ICC goal of efficiency.

2. Economically efficient ICC plans must be based on accurate price signals to all network users.

In the ICC proposals submitted to the FCC in response to the FNPRM there is a marked difference of opinion in philosophy and approach with regard to cost recovery for network usage and the affect on price signals. With some exceptions, most proposals can be categorized as either for or

¹³ Rural Alliance comments, page 42

¹⁴ Rural Alliance comments, page 68.

against bill-and-keep. This divergence is illustrative of how accurate price signals are viewed and would be implemented by parties.

Some parties submit that use of bill and keep will necessarily inflate universal service mechanisms. SureWest opines that “the movement of cost recovery currently obtained from a diverse group of carriers to compensation through a large and homogeneous support fund “would threaten its ability to achieve its common carrier universal service obligations.¹⁵ On the other hand, Sprint argues that bill-and-keep forces providers to become more competitively efficient.¹⁶ Verizon posits that bill-and-keep may also cause arbitrage opportunities. Verizon comments that carriers may gravitate toward customers such as telemarketers with a predominant call-out pattern since termination costs will not be at issue in a bill-and-keep approach.¹⁷ Cable telephony providers do support bill-and-keep approaches but recommend including an origination charge for calls to IXC¹⁸ and NCTA suggests allowing termination charges for non-Tier 1 rural carriers, competing eligible carriers and when traffic is out of balance.¹⁹

¹⁵ SureWest Comments, page 11.

¹⁶ For example, currently some CLECs charge end-users SLCs that are higher than those charged by an ILEC. NASUCA noted in footnote 50 of its comments that the FCC should revise its rule to limit CLEC SLCs to no more than that charged by ILECs.

¹⁷ Verizon comments, page 14.

¹⁸ Cox comments, page 23.

¹⁹ NCTA Comments, page 7.

California agrees that shifting cost recovery in an ICC plan does not necessarily provide proper price signals for network users and may not lead to economically efficient outcomes. With that said, California reiterates support of a proper metric to analyze and compare ICC plans including work on the unified rate plan submitted by NARUC.²⁰

3. The approved ICC regime should be fair.

There is a divergence of policy opinion between the proposed ICC plans. The historical paradigm known as “Calling Party Network Pays” (CPNP) where the calling party is the cost-causer as the initiator of the communication. Certain plans, including ICF, posit that both the calling and called parties benefit from the communication and should both bear the responsibility for the cost of the communication.

This fundamental question goes to the fairness of who pays, but at this time requires further analysis. We are actively involved in the NARUC Task Force that is developing a unified ICC rate proposal that hinges on terminating access, i.e. the terminating carrier is compensated by the initiating carrier. As participants in that process we have so far found that a continuation of CPNP is a fair way to treat ICC.

²⁰ Infra, page 6.

B. Preservation of Universal Service

Reforms to the ICC may necessitate changing the Universal Service Fund (USF) mechanisms. Thus, if and when reductions in ICC payments occur, it is important to address the impacts on the USF. Because rural carriers collect a large part of revenues from inter and intrastate access charges, changes in those charges should not jeopardize the ability of rural consumers to receive service at reasonable rates. FCC is concerned that end-user rates remain affordable and without rate shock.

1. The revenue neutrality mechanism is the most important single determinant of a plan's impact on preserving the universal service fund.

Revenue neutrality, the cornerstone of many plans, is likely the most significant factor in assessing a plan's impact on affordability of telecommunications services. The main differences among the plans regarding recovery are whether it is conditional or unconditional, the basis for the recovery amount, and the method of recovery. There are differing views on revenue neutrality and its impact on universal service.

USTA states that if carriers are not allowed to recover revenue that is lost through reform as part of an ICC plan, some carriers might have to raise rates above affordable or competitively-sustainable levels, resulting in rural rates not comparable to urban rates.²¹ NASUCA disagrees stating that the

²¹ USTA Comments, page 35.

USF should not become a revenue guarantor; rather lost revenue should be based on facts specific to each carrier, and should not be an automatic entitlement.²² CTIA agrees, stating that reductions in ICC should not be made up by increases in universal service support to ensure that ILECS have a sufficient return, as this exacerbates the existing problems with the universal service.²³

California believes that unconditional recovery based on historical revenue levels is likely to result in a larger rate increase than conditional recovery based on projected revenues, which take into account the natural decline due to competition that has been exhibited in the last several years. In choosing between the various options in each step of the revenue recovery process, the FCC should keep in mind the impacts of its selection on affordability.

2. Quantification of each plan's impact on the universal service is needed.

To assess whether a plan meets universal service goals, California believes that there should be a quantification of its impact on customers and states, especially in light of the breadth and depth of the reforms contemplated. ICF criticizes the CBICC proposal for not including a detailed plan of its universal service program and noted that by failing to provide for

²² NASUCA comments, page 23 and 28.

²³ CTIA comments, page 33-34.

universal support, the CBICC proposal risks reverse rate shock to the carrier.²⁴ However, even the ICF has not addressed all the necessary pieces of the ICC puzzle in order to quantify increases in USF.²⁵ California recommends that proposed changes in the USF must be quantified, not necessarily with 5th decimal place precision, but with a reasonably reliable estimate of impacts on end-users so that the FCC will know whether an adopted plan has a high likelihood of success and sustainability from market and policy perspectives. Another reason to quantify the impact of the proposed universal service changes is the concern that the existing universal service fund has grown. ICC reforms that add pressure to the USF need to be critically assessed.

3. Changes are needed in the USF collection methodology and contribution base.

All of the submitted ICC reform plans state the need for universal service mechanisms. Some proposals recommend vast changes in the mechanisms and other proposals believe that the universal service fund works well as is but recommend some minor adjustments. While each of the plans submitted have included proposals for either revisions of the current universal service mechanisms or completely new mechanisms, parties have

²⁴ ICF, page 74-75

²⁵ Rural Alliance Comments, page 89 notes that the ICF plan does not address losses from special access or reciprocal compensation.

recommended change in two relevant and specific areas: collection methodology and contribution base.

In reviewing the proposals, California found that one area of change where parties disagree is with the collection methodology. ICF claims that the continuation of the current revenue-based contribution methodology will cause the system to “continue to destabilize and the competitive asymmetries between, for example, cable modem and DSL providers, will continue to plague the industry.”²⁶ ICF, NARUC, and to a degree, EPG, propose revising the current methodology to contributions that are connections or unit-based. SureWest believes that the current methodology could be retained, but it would have competitive consequences²⁷. Arguments against a connection or unit-based contribution claim that it is regressive and unfair to low-usage end-users. Customers incurring a small monthly bill will pay an equal amount to customers with larger bills²⁸. Alternatively, a contribution mechanism based on revenue imposes a greater share of costs on higher-usage customers.

California contends that a connection or unit-based contribution methodology in the form of telephone numbers²⁹ is more cost-effective to

²⁶ ICF Comments, page 73.

²⁷ SureWest comments, page 16.

²⁸ For example, see NASUCA comments, page 48.

²⁹ Using telephone numbers as the basis for universal service contributions allows for a common

administer than the current revenue-based methodology³⁰ and thus less prone to arbitrage. Furthermore, the savings from these two benefits alone could assist in the containment of the universal service fund. Here again, California reminds the FCC of the need to balance the competing objectives seen throughout this proceeding.

The other major change surrounding the universal service is that of the contribution base. SBC noted in its comments that interstate access revenues, a major contribution source to the fund, have decreased sharply over the past five years³¹. Some parties, such as ICF³² and the Rural Alliance³³ propose that the FCC expand the contribution base to require all forms of telecommunications utilizing the public switched telephone network to contribute to the universal service fund. California notes that if some telecommunications providers and services are required to contribute to the fund but not others, then those not subject to the contributions will have an unfair competitive advantage. California recommends that all working numbers have a USF fee imposed upon them.

denominator across technologies while maintaining the concomitant safeguards such as 911.

³⁰ The current revenue-based methodology includes enormous administrative and compliance complexities, especially when trying to determine the breakdown of revenues from “all-in-one” packages.

³¹ SBC Comments, page 29.

³² ICF comments, page 16.

³³ Rural Alliance, page 14.

C. Competitive and Technological Neutrality

Changes in ICC rules should reflect the changes in technology and not harm a carrier's opportunity to compete, especially those carriers competing in new and inventive ways. Hence, as the FCC pointed out in the FNPRM, similar traffic should be subject to similar rules. Competitive neutrality is not met if users of the network do not pay the same rates for the same functionality. Additionally, California believes that, for any adopted plan to be competitively neutral, it should also address *all* users of the networks³⁴. Further, the FCC declared that proposals that include rules that make differentiations should only do so based on economic or technical differences³⁵. These objectives are consistent with the 1996 Act's goal of fairness.

California's own telecommunications goals also promote competitive and technological neutrality by encouraging competition and the use of new technologies. As the home of Silicon Valley, California is a breeding ground for telecommunications and new technology and contains the densest concentration of innovative industry that exists anywhere in the world. The

³⁴ ICF, the most comprehensive plan to date, by its own admission, does not address the VoIP exemption. In footnote 1 of its December 2004 proposal submission to the FCC, the ICF states that "the Plan currently resolves VOIP issues by creating an end state, at the end of the transition period, in which the compensation regimes applicable to circuit switched and IP traffic are harmonized. Fundamentally, therefore, the remaining open aspects of this issue arise during the transition. Thus, the Plan, in its present form, does not resolve the issue of what compensation, if any, should apply during the transition to a call with one circuit-switched end and one packet-switched end."

³⁵ FNPRM, ¶ 33.

success of this encouragement is shown by the fact that California leads the nation in broadband use; both in terms of total number of broadband lines and U.S. market share, and our growth rate continues to exceed the national average.³⁶

1. Do unified rates equate to competitive neutrality?

Parties submitting proposals for ICC reformation agree on the need for competitive and technological neutrality. SureWest comments that while it is important “to be evenhanded” in regulating all types of providers, it is equally important to compare only those that are providing the same services and shouldering the same obligations. Otherwise, SureWest cautions, “neutrality could create a form of favoritism.”³⁷ Throughout the comments that California reviewed, there seems to be disagreement with one issue: whether neutrality is the same as unified.

In the FNPRM, the FCC stated in its discussion on competitive and technological neutrality that not only is the FCC interested in a regime where similar rates are charged for similar functions, but also in a regime that would apply these rates in a uniform matter for all traffic.”³⁸ The Rural Alliance states in its first intercarrier pricing principle that “unified cost-

³⁶ CPUC Report to the Legislation: Broadband Deployment in California, page 1.

³⁷ SureWest Comments, page 8.

³⁸ FNPRM, page 18.

based rates should be established so that equivalent network functionality is charged at equivalent rates no matter if the traffic is terminating or originating, reciprocal compensation or access, interstate or intrastate.”³⁹ In its comments, SBC notes that the ICF plan ensures much-needed uniformity in the rate structure and rate levels for ICC payments.⁴⁰ However, NECA argues that “a uniform rate for similar services does not necessarily mean all carriers charge the same rate.”⁴¹ NECA believes that cost characteristics for carriers are too diverse for one rate. Instead, NECA recommends that ILEC rates would be grouped according to costs.

As stated previously, California believes that the relevant ICC issues often have conflicting objectives and that a balanced approach is needed when weighing those objectives. California finds two conflicting objectives in this situation. While, California agrees with NECA that ILEC cost characteristics may be too diverse for one rate, we also believe that the cost advantages in administering a regime with one unified rate may be too great to overlook. Unfortunately, California finds that the lack of empirical rigor in any proposal submitted prevents a true accounting of either the diversities or the administrative savings in using one rate.

³⁹ Rural Alliance, page 12.

⁴⁰ SBC, page 7.

⁴¹ NECA comments, pages 15-16.

Additionally, California believes that even if an analysis determines that the diversity of cost characteristics outweighs the cost advantages in administering one unified rate, competitive neutrality should still include the even-handedness to which SureWest refers. One aspect of the ICF plan clearly is not even-handed. Under the ICF proposal CLECs bear the financial responsibility for bringing origination and termination traffic to the tandem for interconnection⁴². California contends this is not even-handed and thus not competitive neutrality.

2. Careful implementation of revenue neutrality is needed to ensure competitive neutrality.

Revenue recovery, if granted in a reformed ICC regime, can significantly impact the competitive landscape. Interstate access revenues and minutes have been declining due to competition. Any proposal that sets the revenue recovery based on a historical year's revenue will insulate the carrier from the forces of competition. NASUCA⁴³ and Frontier⁴⁴ both support the declining recovery concept. Cox recommends that the FCC abort the use of revenue neutrality, as it would "skew the efficient workings of the marketplace and undermine the goal of competitive neutrality."⁴⁵ Cox criticizes the ICF plan and its ICRM for doing nothing to curb the size of the

⁴² ICF Plan, Appendix B, page 3.

⁴³ NASUCA comments, page 13.

⁴⁴ Frontier comments, page 14.

⁴⁵ Cox comments, page 5 and 12.

universal fund and instead causing the fund to continue to balloon while imposing additional burdens on all providers to subsidize ILECs. This, Cox contends, would discriminate against CLECs.⁴⁶

If a revenue recovery mechanism does not incorporate the decline in access revenues, California believes that carriers would have additional revenues that they would not otherwise have in the competitive market. Further, this additional revenue would provide disincentives for carriers to compete on a price basis.

3. The choice of rate design instruments can also impact competitive neutrality.

The revenue recovery vehicles presented in the various proposals are local rates, subscriber line charges (SLCs), and the universal service fund. The first two are essentially rates for basic service reflecting dual jurisdictional regulatory systems. Loss recovery from basic service rates imposes the burden on each company's own customers. The advantages of using basic rates include 1) the costs fall upon the cost-causer – the company's customers and 2) promotion of competition – if there are competitive providers. As more of a carrier's revenues are recovered from the universal service fund, the greater the likelihood of the inefficient firm being subsidized. California surmises that the inefficient firm would then have an

⁴⁶ Cox comments, page 12.

unfair advantage in the competitive market place thus disturbing competitive neutrality. Furthermore, NASUCA points out that, in the case of ICF, additional support is given without any showing of need.⁴⁷

D. Administrative Efficiency

ICC approaches should provide certainty while limiting regulatory intervention and arbitrage concerns. The FNPRM points out that it may be preferable to have a regime based on negotiated agreements rather than detailed rules and regulations.⁴⁸ Certainly, one of the goals of the 1996 Act was to create a thriving, competitive industry while minimizing regulation of that industry. Specifically, the 1996 Act created more regulatory flexibility, required biennial reviews of existing regulations, and eliminated unnecessary regulations.

California has followed in the footsteps of the 1996 Act by opening up a proceeding on the New Regulatory Framework (NRF). NRF was adopted by the California in 1990 replacing the old "Rate of Return" regulation method. Designed to regulate local carriers based on incentives, NRF permits carriers to keep some earnings as an incentive to operate more efficiently. California is now in the process of developing a Uniform Regulatory Framework, or URF, to regulate all California carriers in unified manner. At this early

⁴⁷ NASUCA comments, page 47.

⁴⁸ FNPRM, ¶ 34.

stage of URF, California is devising a conceptual framework for thinking about telecommunications and regulatory reform today, creating an overview of developments in the regulatory programs and telecommunications markets in other states, and developing an understanding of the importance to California businesses, workers, and consumers of having a vibrant telecommunications industry.

In reviewing the ICC comments, most parties agree that changes in the ICC regime should provide for minimal regulatory intervention. SBC commented that if the ICF plan were implemented, its elimination of retail rate caps will lead to a stable deregulated environment in which market forces, rather than regulations govern the industry. SBC adds that if proposals using the CPNP approach were implemented, regulatory intervention needed to regulate termination rates would continue “in perpetuity.”⁴⁹ Furthermore, SBC claims that virtually any other proposal “preserves regulation as a source of constant litigation and market distortion.”⁵⁰ The Rural Alliance noted, in its list of six principles, a need for a collaborative effort between federal and state regulators to address changes in the ICC regime.⁵¹ Furthermore, the Rural Alliance agrees with both

⁴⁹ SBC comments, page 2, 12.

⁵⁰ SBC comments, page 13.

⁵¹ Rural Alliance, page 2.

NASUCA and CBICC in a continuing role for regulatory oversight and argues that ICF's elimination of said oversight is not legal⁵².

As shown by the current NRF and URF proceedings, California concurs with both the ICC reform and the 1996 Act's goals of minimization of superfluous telecommunications regulation. California believes that collaborative efforts between federal and state regulators are necessary and beneficial to ensure the successful implementation of any new ICC regime.

The FCC requested that any significant changes in the ICC regime should include a plan which provides a transition to allow carriers time to adjust business plans. Several of the plans propose wide changes to the ICC regime. While some of those plans provide some details of a transition, most plans provide no details at all. In reviewing several comments, California found only one party that commented on either the lack of a transition plan or any specifics of a transition plan. NECA noted that "it may be premature to determine specific implementation strategies for revised ICC mechanisms" due to a lack of resolution on economic issues. Further, NECA recommends that the Commission be flexible in an approach to implementation. California agrees with the necessity of a detailed transition plan. California will further discuss the general lack of details in the following section.

⁵² Rural Alliance comments, page 158-159.

V. RECOMMENDATIONS FOR NEXT STEPS

As discussed in the previous section, California is concerned that the plans submitted do not provide sufficient detail to determine whether the plan will appropriately work and what the impact of the plan will be.

California urges the FCC to require all parties submitting proposals to provide relevant data and details and to work together with the established NARUC Metrics work group to complete the model analysis of the NARUC plan and use that model to collect further data and analyze the other proposals. Once the analyses are completed, California further recommends that the FCC take a balanced approach in formulating a solution so as to meet the multiple goals of intercarrier compensation reform including economic efficiency, preservation of the universal service, and competitive and technological neutrality with minimal regulatory intervention.

As previously stated, California finds that a lack of data prevents a true accounting of the positive diversities or administrative savings found when using a unified ICC rate. With that in mind, California suggests that in developing a future ICC regime, the FCC should investigate aspects of networks functionality that would lend themselves to a unified rate.

Furthermore, California suggests that the FCC consider transition to a unified rate in steps, with the first step possibly being to unify the interstate and intrastate access charges.

After the initial step of unifying interstate and intrastate access charges, California suggests several interim steps toward one unified forward-looking cost rate. Although there are arguments that a forward-looking cost rate does not accurately reflect costs, California contends that a balanced approach will highlight the savings found in 1) administering a unified rate and 2) eliminating the need for continuous and unnecessary state and federal intervention. California believes that a unified forward-looking rate is economically efficient.

In regards to universal service, California cannot endorse a proposal for which there is no data to back up the associated conclusions. However, California has two urgent concerns: 1) an eroding contribution base and 2) the idea that some states may be unfairly burdened with universal service contributions. We recommend that the FCC consider the use of a connection-based contribution methodology to assess universal service fees that would include the use of telephone numbers.

Most importantly, California recommends that the balanced approach to ICC also be reflected in a balanced approach to regulatory minimization. Deregulation is good when it achieves what it is meant to achieve – competition growth, lower rates for consumers, and lower administrative overhead. However, if these objectives are not reached, then regulatory minimization hurts those it sets out to help – competitors and consumers.

Finally, as ICF pointed out in its comments, almost every proposed ICC reformation plan has an agenda that supports its proponents⁵³. California expects no less, as every company has a fiduciary responsibility to its shareholders. However, for the very same reason, the FCC cannot adopt any single proposal as submitted. The NARUC task force has initiated a good process for developing a plan which takes into account the competing interests. California recommends that the FCC work and assist with the NARUC process or use another process that independently assesses the multiple pieces of the ICC pie. California believes that the FCC needs a reasonable, quantified assessment of any final plan's impact on customers, carriers and the industry as a whole prior to adoption.

Respectfully submitted,

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⁵³ ICF Comments, page 51.

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